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In re Application of	:	
KWON et al.	:	DECISION ON PETITION
Application No. 09/464,322	:	
Filed: December 15, 1999	:	
Attorney Docket No. 25611-000085/US	:	

This is a decision on the petition filed September 7, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **GRANTED**.

A final Office action was mailed on November 24, 2003, setting a three-month period of response. The application became abandoned on February 25, 2004 by operation of law.

Petitioner states that the final Office action was never received by applicant's representative and attests to the fact that a search of the file jacket and docket records indicates that the final Office action was not received. The petition is accompanied by docket records from the law firm of Harness, Dickey & Pierce, PLC listing all responses in the office with a due date of February 24, 2004 and stating that had the Office action been received, it would have been entered into the docket records having a base date of November 24, 2003 and a due date of February 24, 2004. The petition also includes a computerized docket sheet for this particular application showing docketed due dates for this application and a photocopy of the file jacket for the application where the docket entries are entered manually and again stating that had the Office action been received, the Office action and the February 24, 2004 due date would have been written on the file jacket.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the final Office action was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office


action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

Petitioner has provided the required statement attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. Further, petitioner has provided the docket records, the computerized docket sheet and a photocopy of the file jacket for the application where the docket entries are entered manually as evidence that had the Office action been received, the Office action and the February 24, 2004 due date would have been written on the file jacket

Since applicant has made the requisite showing required under M.P.E.P §711.03(c), the holding of abandonment is withdrawn.

The application file is being forwarded to the Technical Support staff for re-mailing the final Office action. The shortened period for response set therein will be reset to expire three months from the date the Office action is remailed.

Questions regarding this decision should be directed to Jose' G. Dees at (571-171-1569).



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